

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE:)

ONTOS, INC.,)

Debtor.)
_____)

Case No's. 05-11708-RGS
05-11710-RGS

**JOINT DESIGNATION BY APPELLANTS OF THE ITEMS TO BE INCLUDED
IN THE RECORD ON APPEAL AND STATEMENT OF THE ISSUES TO BE
PRESENTED**

Pursuant to Federal Rule of Bankruptcy Procedure 8006, and Federal Rule of Appellate

Procedure 6 (b) (2) (B) Petitioners T. Mark Morley and Thomas J. McCoy hereby

i) designate the following items to be included

in the record of appeal and

ii) submit the following statement of issues to be presented:

**I. Re-Designation Of The Items Delivered From the Bankruptcy Court To The
District Court To Be Included In The Record On Appeal**

1) Stipulation by the Trustee Joseph G. Butler and VennWorks, LLC,

Amphion Ventures, FireStar Software, Inc. Robert J. Bertoldi, Richard C.E. Morgan and

Kenneth Lord. (filed on March 14, 2005).

2) Motion by the Trustee to Approve Stipulation by and between the Trustee

and VennWorks, LLC. Amphion Ventures, FireStar Software, Inc., Robert J. Bertoldi,

Richard C.E. Morgan and Kenneth Lord. (filed on March 14, 2005).

- 3) Objection by T. Mark Morley and McCoy to the Motion filed by the Trustee for Approval of the Stipulation. (filed on May 24, 2005).
- 4) Affidavit of Creditor Morley. (filed on May 24, 2005).
- 5) Declaration of Kevin J. O'Connor. (filed on May 24, 2005).
- 6) Motion by Creditors Morley and McCoy for Order Authorizing Them to Proceed Against Debtor's Solvent Co-Defendants. (filed on May 26, 2005).
- 7) Objection by the Trustee to Motion by Creditors Morley and McCoy For Order Authorizing Them To Proceed Against Debtor's Solvent Co-Defendants and Response to Objection to Motion by the Trustee for Approval of Stipulation. (filed on June 20, 2005).
- 8) Response by Interested Parties FireStar Software, Inc. and Kenneth Lord to Objection by Creditors Morley and McCoy to Motion by the Trustee for Approval of Stipulation and Opposition to Motion by Creditors Morley and McCoy for Order Authorizing Them to Proceed Against Debtor's Solvent Co-Defendants. (filed on June 20, 2005).
- 9) Transcript of the Court's hearing dated June 29, 2005, on the Motion by Chapter 7 Trustee for Approval of Stipulation by and between the Trustee and Vennworks, LLC, Amphion Ventures, LP, Firestar Software, Inc., Robert J. Bertoldi, Richard E. Morgan and Kenneth Lord (Docket No. 30), and the Motion for an Order Authorizing Them to Proceed Against Debtor's Solvent Co-Defendants.

10) Judge Hillman Order denying Motion by Creditors Morley and McCoy for Order Authorizing Them to Proceed Against Debtor's Solvent Co-Defendants. (entered on June 29, 2005).

10) Judge Hillman Order granting Motion by the Trustee to Approve Stipulation by and between the Trustee and VennWorks, LLC. Amphion Ventures, FireStar Software, Inc., Robert J. Bertoldi, Richard C.E. Morgan and Kenneth Lord. (entered on June 29, 2005).

11) Notice of Appeal filed by Creditors Morley and McCoy. (filed on July 11, 2005)

II. Designation Of The Items From the District Court Proceedings To Be Included In The Record On Appeal.

- 1) Appellant's Brief by T. Mark Morley. (Entered: 10/06/2005)
- 2) Appellee's Brief by Firestar Software, Inc., Kenneth Lord, Amphion Ventures, Robert J. Bertoldi, Richard C.E. Morgan. (Entered: 11/02/2005)
- 3) Record Appendix/Exhibit of Appellees by Firestar Software, Inc., Kenneth Lord, Amphion Ventures, Robert J. Bertoldi, Richard C.E. Morgan. (Entered: 11/02/2005)
- 4) Appellee's Brief by Joseph G Butler. Appellant Reply Brief due by 11/4/2005. (Entered: 10/24/2005)
- 5) Appellant's Reply Brief by T. Mark Morley. (Entered: 10/31/2005)
- 6) Transcript of proceedings held before Judge Richard G. Stearns : Argument on Bankruptcy Appeal 05-11708 and 05-11710 held on 2/1/2006.

- 7) Judge Richard G. Stearns : Order entered. Memorandum and Order on Appeal from Orders of the U.S. Bankruptcy Court for the District of Massachusetts (Eastern Division) (Hon. William C. Hillman, U.S. Bankruptcy Judge)(Flaherty, Elaine) (Entered: 02/03/2006)
- 8) Judge Richard G. Stearns : Order of Dismissal (Entered: 02/06/2006)
- 9) Notice of Appeal filed by Plaintiffs Morley and McCoy. filed on February 28, 2006,
- 10) Joint Motion of Appellants for Stay Pending Appeal filed March 3, 2006
- 11) Certified copy of the district court docket entries prepared by the clerk under Rule 3(d).

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III. Statement of the Issues to be Presented

1. Bankruptcy Court jurisdiction and authorization to adjudicate state creditor causes of action.
2. Validity of Non-debtor third party releases
3. Trustee's non-succession to general and personal creditor causes of action.
4. Trustee's non-succession to Massachusetts state cause of action for fraudulent conveyance.
5. Trustee's non-succession to Massachusetts state cause of action for alter ego, and that alter ego and fraudulent conveyance are different causes of action under Massachusetts law.
6. Trustee's non-succession to Massachusetts state cause of action for breach of fiduciary duty to the creditors

7. Trustee's non-succession to Massachusetts state cause of action for successor liability, and that successor liability and fraudulent conveyance are different causes of action under Massachusetts law.
8. Trustee's non-succession to Massachusetts state cause of action for fraud and deceit.
9. That creditor causes of action are themselves not property of the estate.

Dated: March 3, 2006
Dedham, MA

Respectfully Submitted,

/s/ T. Mark Morley

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Certificate of Service

I hereby certify that a true copy of the above document was served upon the attorney of record for each party and on Settlement Counsel, Civil Appeals Management Program,
1 Courthouse Way, Suite 3440, Boston, MA 02210

/s/T. Mark Morley

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